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COMMITTEE ON APPLICATIONS FOR REVIEW
OF ADMINISTRATIVE TRIBUNAL JUDGEMENTS
Thirty-eighth session

# INFORMATION CIRCULAR

## I. DATE AND PLACE OF MEETING

1. The 1st meeting of the thirty-eighth session of the Committee on Applications for Review of Administrative Tribunal Judgements will take place at United Nations Headquarters on Monday, 9 December 1991. The exact time and place of the meeting will be announced in the Journal of the United Nations. The provisional agenda for the session is to be found in document A/AC.86/R.213.

## II. MEMBERSHIP OF THE COMMITTEE

2. Under article 11 of the statute of the United Nations Administrative Tribunal (see General Assembly resolution 957 (X) of 8 November 1955), the Committee is composed of Member States the representatives of which have served on the General Committee of the most recent regular session of the General Assembly. The present membership of the Committee therefore comprises the following 29 Member States: Australia, Belize, Botswana, China, Ecuador, France, Guinea, Honduras, Ireland, Italy, Libyan Arab Jamahiriya, Malaysia, Mozambique, Myanmar, Oman, Poland, Qatar, Saint Lucia, Saudi Arabia, Thailand, Togo, Tunisia, Ukraine, United Arab Emirates, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America and Zaire.

## III. PREVIOUS MEETINGS OF THE COMMITTEE AND DECISIONS TAKEN

3. Information concerning previous meetings of the Committee and decisions of the Committee at its first to thirty-seventh sessions is to be found in documents A/AC.86/INF/1-36.

4. At its thirty-seventh session, held on 9, 11 and 13 September 1991, the Committee considered the following applications:

(a) Application of Mr. Fayache for review of Administrative Tribunal Judgement No. 507 - Fayache v. the Secretary-General of the United Nations;

(b) Application of Ms. Hamadeh-Banerjee for review of Administrative Tribunal Judgement No. 509 - Hamadeh-Banerjee v. the Secretary-General of the United Nations.

5. On 9 and 11 September 1991, after consideration of the aforementioned applications, the Committee decided, respectively, that there was not a substantial basis for the applications of Ms. Hamadeh-Banerjee and Mr. Fayache under article 11 of the statute of the Administrative Tribunal and therefore concluded that the International Court of Justice should not be requested to give an advisory opinion in respect of Judgements Nos. 507 and 509.

6. The decisions of the Committee at its thirty-seventh session were formally announced at the meeting of the Committee held in public on 13 September 1991. They are contained in document A/AC.86/47.

## IV. PURPOSE OF THE SESSION

### A. Application received from Mr. Tetteh Kofi

7. On 29 May 1991, the United Nations Administrative Tribunal rendered Judgement No. 519 in the case of Kofi v. the Secretary-General of the United Nations. The official text of the judgement in English and French is to be found in document AT/DEC/519. The judgement was communicated to the parties on 31 July 1991.

8. The application from Mr. Kofi dated 30 September 1991, requesting a review of Judgement No. 519 rendered by the United Nations Administrative Tribunal in the case of Kofi v. the Secretary-General of the United Nations, was received by the Secretary of the Committee on the same date.

9. On 4 November 1991, after translation of the application of Mr. Kofi into the official languages of the General Assembly, it was communicated in document A/AC.86/R.211 to all members of the Committee as well as to parties to the proceedings before the Tribunal, together with a copy of Administrative Tribunal Judgement No. 519 (AT/DEC/519). It should be mentioned that the application had attached to it six annexes, which have not been circulated since such circulation is not provided for in the rules of procedure of the Committee. Those documents may be examined in the office of the Secretary of the Committee (room S-3420I).

10. Comments of the Respondent submitted with respect to the application of Mr. Kofi in accordance with paragraph 1 of article V of the rules of procedure of the Committee are contained in document A/AC.86/R.212.

B. General provisions

11. The official dossier of the Administrative Tribunal in the case of Mr. Kofi is on file with the Secretary of the Committee in room S-3420I and may be examined on request by members of the Committee.

12. Under article 11, paragraph 2, of the statute of the Administrative Tribunal, the Committee shall decide within 30 days from receipt of the above-mentioned application whether or not there is a substantial basis for such application. If the Committee decides that such a basis exists, it shall request an advisory opinion of the International Court of Justice. Under paragraph 4 of article 11, the Committee is authorized by the General Assembly, for the purposes of the article, to request an advisory opinion of the Court. According to the provisions of article VII of the rules of procedure of the Committee, it shall be convened for the consideration of the application no later than 25 days from the date of the receipt of the application. Under subparagraph 1 (c) of article II of the same rules, the date of receipt by the Committee of an application is the date two weeks after the copies of the application are dispatched to the members of the Committee by its Secretary.

## V. TERMS OF REFERENCE AND RULES OF PROCEDURE

13. The terms of reference of the Committee are contained in article 11 of the statute of the United Nations Administrative Tribunal. That article was added to the statute by General Assembly resolution 957 (X) of 8 November 1955. Its text is as follows:

"Article 11

"1. If a Member State, the Secretary-General or the person in respect of whom a judgement has been rendered by the Tribunal (including anyone who has succeeded to that person's rights on his death) objects to the judgement on the ground that the Tribunal has exceeded its jurisdiction or competence or that the Tribunal has failed to exercise jurisdiction vested in it, or has erred on a question of law relating to the provisions of the Charter of the United Nations, or has committed a fundamental error in procedure which has occasioned a failure of justice, such Member State, the Secretary-General or the person concerned may, within thirty days from the date of the judgement, make a written application to the Committee established by paragraph 4 of this article asking the Committee to request an advisory opinion of the International Court of Justice on the matter.

"2. Within thirty days from the receipt of an application under paragraph 1 of this article, the Committee shall decide whether or not there is a substantial basis for the application. If the Committee decides that such a basis exists, it shall request an advisory opinion of

the Court, and the Secretary-General shall arrange to transmit to the Court the views of the person referred to in paragraph 1.

"3. If no application is made under paragraph 1 of this article, or if a decision to request an advisory opinion has not been taken by the Committee, within the periods prescribed in this article, the judgement of the Tribunal shall become final. In any case in which a request has been made for an advisory opinion, the Secretary-General shall either give effect to the opinion of the Court or request the Tribunal to convene specially in order that it shall confirm its original judgement, or give a new judgement, in conformity with the opinion of the Court. If not requested to convene specially, the Tribunal shall at its next session confirm its judgement or bring it into conformity with the opinion of the Court.

"4. For the purpose of this article, a Committee is established and authorized under paragraph 2 of Article 96 of the Charter to request advisory opinions of the Court. The Committee shall be composed of the Member States the representatives of which have served on the General Committee of the most recent regular session of the General Assembly. The Committee shall meet at United Nations Headquarters and shall establish its own rules.

"5. In any case in which award of compensation has been made by the Tribunal in favour of the person concerned and the Committee has requested an advisory opinion under paragraph 2 of this article, the Secretary-General, if satisfied that such person will otherwise be handicapped in protecting his interests, shall within fifteen days of the decision to request an advisory opinion make an advance payment to him of one third of the total amount of compensation awarded by the Tribunal less such termination benefits, if any, as have already been paid. Such advance payment shall be made on condition that, within thirty days of the action of the Tribunal under paragraph 3 of this article, such person shall pay back to the United Nations the amount, if any, by which the advance payment exceeds any sum to which he is entitled in accordance with the opinion of the Court."

14. At its 1st meeting, on 16 October 1956, the Committee adopted its rules of procedure which were later amended on 25 October 1956, 21 January 1957, 11 December 1974, 16 February 1983 and 30 July 1991. The current text of the rules of procedure of the Committee is contained in document A/AC.86/2/Rev.4.

15. In accordance with article VIII of the rules of procedure of the Committee all its deliberations, including the adoption of all decisions concerning applications, shall take place in private. The decisions of the Committee and the text of any questions to be addressed to the International Court of Justice, as well as the results of and the participants in any votes taken during the private deliberations, shall be formally announced in a public meeting, at which any member of the Committee may make a statement for the record. As provided in article XII of the rules of procedure of the

Committee, sound recordings shall be prepared and kept of all proceedings of the Committee, in accordance with the practice of the United Nations. If the Committee requests an advisory opinion of the International Court of Justice in respect of an application, the Secretary, in accordance with paragraph 2 of article XII of the rules of procedure, shall prepare and transmit to the Court, to all members of the Committee and to the parties to the proceedings before the Administrative Tribunal, a verbatim record, in English and French, of the proceedings of the Committee in respect of that application, except for those in the private deliberations provided for in paragraph 3 of article VIII.

## VI. INQUIRIES

16. Inquiries may be addressed to the Secretary of the Committee, room S-3420I, extension 35347.

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